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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/644,731	08/21/2003	Francois Vardon	241763US6 DIV	6198

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EXAMINER

WILKENS, JANET MARIE

ART UNIT	PAPER NUMBER
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3637

DATE MAILED: 10/03/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/644,731	Applicant(s) VARDON, FRANCOIS	
	Examiner Janet M. Wilkens	Art Unit 3637	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on 25 August 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,2,4-9 and 21 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,2,4-9 and 21 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 25 July 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☒ Certified copies of the priority documents have been received in Application No. 10/070,803.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>9/7/2005</u> | 6) <input type="checkbox"/> Other: _____ |



Drawings

The replacement sheet of drawings submitted July 25, 2005 has been approved by the examiner.

Information Disclosure Statement

Although the applications cited on the IDS filed September 7, 2005 are noted by the examiner, there is no need to cite these applications on any patent that may issue and therefore, these "references" have been lined through.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1, 2, 4-9 and 21 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-9 of copending Application No. 11/010,260. Although the conflicting claims are not identical, they are not patentably distinct from each other because both the co-pending and instant applications claim a refrigerator shelf comprised of a panel and a plastic

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structure attached to the panel at its edges. Lateral pressure is present between the structure and panel. An adhesive can also be provided between the members.

Furthermore, two different plastics can be used in the plastic structure and to provide for a drawer under the shelf, elements having first, second and third parts are provided.

Claims 1, 2, 4-9 and 21 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-11 of copending Application No. 11/147,225. Although the conflicting claims are not identical, they are not patentably distinct from each other because both the co-pending and instant applications claim a refrigerator shelf comprised of a panel and a plastic structure attached to the panel at its edges. Lateral pressure is present between the structure and panel. An adhesive can also be provided between the members.

Furthermore, two different plastics can be used in the plastic structure and to provide for a drawer under the shelf, elements having first, second and third parts are provided.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claim 21 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had

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possession of the claimed invention. Namely, nowhere in the specification, as originally filed, is it stated (or can it be implied) that the recess of the plastic structure can have a depth of as much as 4 mm. Just because the plastic structure as a whole can shrink up to 4 mm does not imply that its recess can have a depth this same dimension.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1, 2, 8, 9 and 21 are rejected under 35 U.S.C. 102(e) as being anticipated by Goyette et al (6,773,651). Goyette teaches a refrigerator shelf (Figs. 1 and 3) comprised of a panel (22) and a plastic structure (21) attached to the panel at its edges and holding the panel in a recess thereof "via a compressive lateral pressure" (formed by shrinkage of the structure; similar to the process specified in the disclosed invention). The shelf slides with respect to supports in a refrigerator via grooves (54). Note: for claim 9, product by process limitations are given no weight in a claim.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 2, 7-9 and 21 are rejected under 35 U.S.C. 102(b) as anticipated by Caruso et al (5,641,217) or, in the alternative, under 35 U.S.C. 103(a) as obvious over Bird et al (6,210,618). Caruso teaches a refrigerator (Fig. 1) having a shelf (12) comprised of a panel (30) and a plastic structure (34) attached to the panel at its edges (during a molding process) wherein "lateral pressure" would inherently being applied and maintained throughout use of the shelf. Furthermore, elements (16) having first, second and third parts (56,28 and 54, respectively) are attached to the bottom of the shelf and the shelf as a whole can be slid into and out from the inner liner of the refrigerator (a support). For claim 1, Caruso fails to specifically teach that the plastic structure applies a compressive lateral pressure to hold the panel therein. Bird teaches a process by which a panel (G) and a plastic structure (F) are attached. The plastic structure is shrunk fit onto the panel at its edges; no gap or openings remaining between the panel/structure. Therefore, the panel is inherently held in place by the lateral sides of the recess/structure "via a compressive lateral pressure" (formed by shrinkage of the structure similar to the process specified in the disclosed invention). It would have been obvious to one of ordinary skill in the art at the time of the invention to use an alternate means/process to attach the panel and plastic structure of Caruso

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together, i.e. using a shrinkage process, such as is taught by Bird, instead of the molding process presently used, since these processes are functional equivalents and either would work equally well for attaching the structure to the panel. The end process of Bird forming a tight connection between the members. Note: for claim 9, product by process limitations are given no weight in a claim.

For claim 4, Caruso/Caruso in view of Bird fails to teach that the plastic structure is made of two different plastics. The examiner takes Official notice that plastic structures constructed using two different types of plastics are well known in the art. Therefore, it would have been obvious to use two different plastics in the plastic structure of Caruso, since this type of product is well known in the art, e.g. for acquiring a specific frame strength, directed flexibility, etc. For example, the flexible plastic would be useful adjacent the glass panel for panel insertion reasons and the more rigid plastic would be useful adjacent the elements for a stronger point of attachment.

Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Caruso/Caruso et al in view of Bird et al as stated above and further in view of Herrmann et al (5,524,981). Caruso/Caruso in view of Bird teaches a shelf (12) made up of a plastic structure (34) forming a continuous internal U-shaped recess/channel (see Figs. 2 and 4) which holds a glass panel (30) therein. For claim 5, Caruso/Caruso in view of Bird fails to teach a clip to hold the glass and plastic structure together. Herrmann teaches a shelf wherein a glass sheet (22) is helped held in a frame channel (24) by a clip (82). The clip is part of a drainage system provided on the shelf (Fig. 11). It would have been obvious to one of ordinary skill in the art at the time of the invention

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to modify the shelf of Caruso/Caruso in view of Bird by adding a drainage system with clip between the structure and glass panel, such as is taught by Herrmann, to provide a drainage system on the shelf.

Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Caruso/Caruso et al in view of Bird as stated above and further in view of Cherry et al (5,228,764). Caruso/Caruso in view of Bird teaches a shelf (12) made up of a plastic structure (34) forming a continuous internal U-shaped recess/channel (see Figs. 2 and 4) which holds a glass panel (30) therein via lateral pressure. For claim 6, Caruso/Caruso in view of Bird fails to teach a bond/adhesive between the glass and plastic structure. Cherry teaches a shelf wherein a glass sheet is held in a frame channel via adhesive (see column 2, lines 59-65). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the shelf of Caruso/Caruso in view of Bird by adding adhesive between its structure and glass panel, such as is taught by Cherry, to provide a means to more securely/permanently hold the glass panel within the structure channel, to provide a means that would fill in gaps between the panel and structure (in places not held by the lateral pressure), etc.

Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Goyette et al in view of Herrmann et al (5,524,981). Goyette teaches a shelf (Fig. 1) made up of a plastic structure (21) forming a continuous internal U-shaped recess/channel (see Fig. 3) which holds a panel (22) therein. For claim 5, Goyette fails to teach a clip to hold the glass and plastic structure together. Herrmann teaches a shelf wherein a glass sheet (22) is helped held in a frame channel (24) by a clip (82). The clip is part of a drainage

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system provided on the shelf (Fig. 11). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the shelf of Goyette by adding a drainage system with clip between the structure and glass panel, such as is taught by Herrmann, to provide a drainage system on the shelf.

Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Goyette et al in view of Cherry et al (5,228,764). Goyette teaches a shelf (Fig. 1) made up of a plastic structure (21) forming a continuous internal U-shaped recess/channel (Fig. 3) which holds a glass panel (22) therein via lateral pressure. For claim 6, Goyette fails to teach a bond/adhesive between the glass and plastic structure. Cherry teaches a shelf wherein a glass sheet is held in a frame channel via adhesive (see column 2, lines 59-65). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the shelf of Goyette by adding adhesive between its structure and glass panel, such as is taught by Cherry, to provide a means to more securely/permanently hold the glass panel within the structure channel, to provide a means that would fill in gaps between the panel and structure (in places not held by the lateral pressure), etc.

Response to Arguments

Applicant's arguments filed July 25, 2005 have been fully considered but they are not persuasive.

In response to applicant's arguments that Caruso's panel and plastic structure are not held together by compressive lateral pressure: the examiner still contends that

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some lateral pressure would be inherent between the edges of the panel and plastic structure of Caruso. As shown in Fig. 4, the glass panel of Caruso is tightly fit within its plastic structure after the finished molding process; this would imply that the plastic structure is molded to the glass panel on all three sides. This process and gravity, for example, would result in some degree of pressure being applied to edge portions of the panel. See also page 1 of the instant application's specification (lines 19-27), wherein it is stated that the molding of a frame onto a panel via encapsulation (such as is taught by Caruso) yields a structure wherein the frame grips not only the top and bottom portions of the panel, but the edge portions as well. Even if this were not the case, references such as Bird et al (6,210,618) clearly teach the known practice of shrink molding a plastic structure onto a panel so that no gap exists between the members. This "tight fitting" resulting in pressure being constantly applied from all portions of the structure, including the side portions, during use of the panel/structure unit.

In response to the argument concerning the 112 first paragraph rejection: the examiner still argues that just because the plastic structure as a whole can shrink up to 4 mm this does not imply that its recess can have a depth this same dimension. There is nothing inherent in the process of making the shelf (or found in the disclosure) that would lead one to conclude this result.

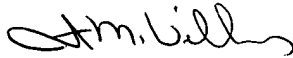
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Janet M. Wilkens whose telephone number is (571) 272-6869. The examiner can normally be reached on Monday-Thursday.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lanna Mai can be reached on (571) 272-6867. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Wilkens
September 27, 2005


JANET M. WILKENS
PRIMARY EXAMINER
